

FILED

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ALEX CALVO, CLERK  
BY: E. Rodriguez  
DEPUTY, SANTA CRUZ COUNTY

THE SUPERIOR COURT OF CALIFORNIA IN  
AND FOR THE COUNTY OF SANTA CRUZ

People of the State of California,

Plaintiff.

vs.

Richard J. Quigley

Defendant.

CASE #: 3WMO18538,

) 4WM034081, 4WM021S12, 4WM023363,

) 4SM028271, 4SM021812, 4SM021S12,

) 4SM023894 & 4SM044470

)

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER AFTER HEARING

)

BACKGROUND

Defendant was cited for violating California's mandatory helmet use law on July 24, 2003, February 6, 2004, March 19, 2004 and June 11, 2004 by the Watsonville Police Department, and on April 4, 2004, April 8, 2004, April 27, 2004, May 31, 2004 and August 27, 2004 by the California Highway Patrol. On each occasion, the evidence has shown that the defendant was wearing some form of headgear bearing evidence of a certification of compliance with Federal regulations, the letters "DOT," except on June 11, 2004, when the defendant was not wearing any headgear at all.

On March 17, 2006, defendant filed a motion to dismiss on constitutional grounds. At the conclusion of the hearing of defendant's motion, on July 14, 2006, this court did find the helmet law statutes were unconstitutional as applied by the citing officers, dismissed the charges against the defendant, and on this date filed this Findings of Fact, Conclusions of Law and Order After Hearing to clarify the reasons for its ruling.

1 FINDINGS OF FACT AND CONCLUSIONS OF LAW

2 *The Statutes*

3 The requirements for compliance with California's mandatory helmet use law are set out  
4 in California Vehicle Code (hereinafter "CVC") §§27802 and 27803, which state in order of  
5 application:

6 eve §27803(b) - It is unlawful to operate a motorcycle, motor-driven cycle, or  
7 motorized bicycle if the driver or any passenger is not wearing a safety helmet  
8 as required by subdivision (a).

9 eve §27803(a) - A driver and any passenger shall wear a safety helmet meeting  
10 requirements established pursuant to Section 27802 when riding on a motor-  
11 cycle, motor-driven cycle, or motorized bicycle.

12 eve §27802 - The department may adopt reasonable regulations establishing  
13 specifications and standards for the safety helmets offered for sale, or sold, for  
14 use by drivers and passengers of motorcycles and motorized bicycles as it  
15 determines are necessary for the safety of those drivers and passengers. The  
16 regulations shall include, but are not limited to, the requirements imposed by  
17 Federal Motor Vehicle Safety Standard No. 218 (49 e.F.R Sec. 571.218) and  
18 may include compliance with that federal standard by incorporation of its  
19 requirements by reference. Each helmet sold or offered for sale for use by  
20 drivers and passengers of motorcycles and motorized bicycles shall be  
21 conspicuously labeled in accordance with the Federal Standard which shall  
22 constitute the manufacturers certification that the helmet conforms to the  
23 applicable Federal. Motor Vehicle Safety Standards.

24 Subdivision (a) and (b) of CVC §27803 make it unlawful to operate a motorcycle without  
25 a safety helmet "meeting *requirements* established pursuant to Section 27802." (Italics added.)

26 Section 27802, subdivision (a), contains three sentences. The first sentence merely  
27 authorizes the department to adopt "reasonable regulations establishing specifications and  
28 standards for safety helmets." This first sentence, which is merely an enabling provision, does  
not appear to be one of the "requirements" referred to in section  
27803.

111 The second sentence of the subdivision mandates that the promulgated state  
2 || regulations include, at a minimum, "the *requirements* imposed by Federal Motor Vehicle 3 ||  
Safety Standard No. 218 (49 C.F.R. Sec. 571.218)" (hereinafter "FMVSS 218"). (Italics 411 added.)  
This sentence, which actually includes the word "requirement," certainly *could* 5 || be one of the  
"requirements established pursuant to Section 27802" referred to in section 611 27803, subdivision  
(a). If the latter statute were so construed, California law would  
7 || require motorcyclists *to wear a properly fabricated helmet*, Le., a helmet meeting federal 8 ||  
safety standards.

911 The third sentence of section 27802, subdivision (a), imposes a requirement that  
10 || every helmet "sold or offered for sale ... be conspicuously labeled" by the manufacturer,  
11 which label shall "constitute the manufacturer's certification that the helmet conforms"  
12 to federal safety standards. This sentence requiring conspicuous labeling could also be  
13 || read as one of the "requirements established pursuant to Section 27802" referred to in 1411  
section 27803, subdivision (a). If the latter statute were so construed, California law 1511 would  
require a motorcyclist to *wear a properly labeled helmet*," Le., a helmet bearing 1611 the  
manufacturer's "certification" that it meets federal safety standards (whether or not 17 || the helmet  
*in fact* did meet those standards). Alternatively, the third sentence could 1811 reasonably be viewed  
as imposing a requirement on the *sellers and/or manufacturers* of 1911 motorcycle helmets, but not  
on the *users* of the helmets (who have no practical control 20 || over their labeling.)

2111 Thus, read together, sections 27803 and 27802 could reasonably be construed to  
2211 require that motorcyclists wear a helmet that (1) is properly *fabricated*, Le., meets fed23 || eral  
safety standards, or (2) is properly *labeled*, Le. bears the manufacturer's certification 2411 that it  
meets federal safety standards (whether or not the certification is correct), or (3) is 25 || *both*  
properly fabricated and properly labeled.

26 || *Buhl v. Hannigan*, 16 Cal.App.4th 1612 (1993)

2711 *The Buhl* case involved an attack on the constitutionality of California's motor-  
2811 cycle helmet laws, as written (in that the case was filed prior to the statute's enactment

1 on January 1, 1992). One aspect of the attack was that the laws were void for vagueness because  
2 they prescribed a standard which could not be understood by persons of ordinary intelligence. (16  
3 Cal.App.4th a p. 1622) The first and significant component of that attack was directed at the  
4 requirement that helmets meet federal safety standards. The appellants claimed that "([t]he  
5 incorporated federal safety standards are so technical one must be a physicist or an engineer  
6 testing the product in a laboratory to ascertain whether a particular helmet complies." (*Id.*)

7 Significantly, the Court of Appeal rejected that argument by reasoning that it was based  
8 on the *false* premise that sections 27802 and 27803 require motorcyclists to wear a properly  
9 *fabricated* helmet. Rightly or wrongly, it characterized such a reading of the statutes as "absurd,"  
10 and it held that the statutes require *only* that motorcyclists wear a properly *labeled* helmet. The  
11 court opined as follows:

12 "underlying this [the appellants' vagueness] argument is the proposition that the  
13 statute requires the consumer or enforcement officer to decide if the helmet is  
14 properly fabricated, and such a reading of section 27803 is absurd. When  
15 sections 27802 and 27803 are harmonized, as they must be [citation], it is clear  
16 the law requires only that the consumer wear a helmet bearing a certification of  
compliance." (*ibid.*)

17 *Bianco v. CHp*, 24 Cal.App.4th 1113 (1994)

18 The exception to the *Buhl* doctrine was set out in *Bianco v. CHP*. wherein the court  
19 upheld the 3rd and 4th numbered judgment of the lower court, which said:

20 "3. In accordance with the terms of the Act, although in the first instance  
21 manufacturers are authorized, indeed required before sale, to self-certify that  
22 their helmets meet the standard of FMVSS 218, that self-certification creates  
23 only a rebuttable presumption that such helmets meet FMVSS 218.

24 "4. In accordance with provisions of the Act, that presumption may be rebutted  
25 by a determination of non-compliance issued by the National Highway  
26 Transportation Safety Administration (hereinafter 'NHTSA ') of the  
27 Department of Transportation, by a manufacturer recall of its product, or by  
28 any other competent objective evidence which establishes that in facta given  
manufacturer's helmet does not meet the safety standards of FMVSS 218."

1 In summary, the court concluded:

2 "We conclude the statement in *Buhl* that consumer compliance with the state  
3 law only requires the consumer to wear a helmet bearing the DOT self-  
4 certification sticker does not apply when a helmet has been shown not to  
5 conform with federal standards and the consumer has actual knowledge of this  
6 fact." *Ibid.*

7 *Easyriders v. Hannigan*, 92 F.3d 285 (9<sup>th</sup> Cir. 1996)

8 In upholding an injunction issued by the district court in *Easyriders*, enjoining, or  
9 attempting to enjoin, the very process imposed by the prosecution on the defendant here, the 9th  
10 Circuit Court of Appeals wrote:

11 The helmet law, as interpreted by the California courts and correctly articulated  
12 by the district court, requires *specific intent* as one of its elements. A  
13 motorcyclist who is wearing a helmet that was certified by the manufacturer at  
14 the time of sale must have actual knowledge of the helmet's nonconformity to  
15 be guilty of violating the helmet law. Thus, in addition to intending to wear the  
16 helmet in question, the motorcyclist must intend to wear a helmet that he  
17 knows does not comply with the helmet law. Thus, because a violation of the  
18 helmet law requires *specific intent* on the part of a motorcyclist wearing a  
19 helmet that was certified at the time of purchase, the ticketing officer must  
20 have probable cause to believe that the *specific intent*, caused by the  
21 motorcyclist's actual knowledge of nonconformity, exists. (*Ibid* - *emphasis*  
22 added)

23 *The Helmet Law Statutes, As Applied.*

24 Throughout the litigation of these cases, the prosecution did not provide any evidence that  
25 the California Highway Patrol had adopted any regulations whatsoever, pursuant to section 27802,  
26 other than the requirements imposed by FMVSS 218 - performance standards, not model  
27 specifications - which according to the *Buhl* doctrine, cannot be applied to consumers.

28 By contrast, the defendant provided ample evidence that the CHP had, for the purposes of  
their in-house training, and training of their allied agencies, equated compliance with FMVSS  
218 with "DOT approved," and stated that in order to comply with the helmet law, motorcyclists  
must wear a "DOT approved" helmet (or at least an approved helmet). However, FMVSS 218  
clearly provides nothing by way of authority to

1 approve helmets. The Federal government, in fact, has stated in its interpretive letters, that  
2 the government does not approve helmets, that FMVSS 218 does not approve helmets, and  
3 that the phrase "DOT approved" has no meaning in fact or in law.<sup>1</sup> (NHTSA counsel  
4 letters.)

5 Additionally, CHP training instilled the belief in vehicle code enforcement officers  
6 throughout the State that they could tell by looking whether a given helmet was *approved*  
7 for use in California - the presence of a certification of compliance (the "DOT" symbol), the  
8 only requirement noted by the *Buhl* court, notwithstanding.

9 The requirement of *Buhl* that the headgear bear a certification of compliance was  
10 neither accepted by the citing officers nor the prosecution as evidence of compliance, nor did  
11 the prosecution offer any evidence that the rebuttable presumption created by the presence of  
12 the DOT label on the defendant's headgear had been rebutted by a manufacturer's recall, a  
13 determination of noncompliance by NHTSA or evidence that the headgear had been tested by  
14 an independent testing laboratory, and failed, as required in  
15 *Bianco*.

16 This evidence of how the statute was implemented was substantiated by the testimony  
17 of the citing officers and confirmed by the prosecution's theories of the case(s) throughout the  
18 proceedings.

19 The only evidence offered against the defendant, in those instances where he was  
20 wearing headgear which he calls a "helmet," were complaints by the prosecution that the  
21 headgear looked like a "typical baseball cap" (appearance constitutes an element of  
22 fabrication), "constructed of a soft fabric" (fabrication), "having no inner padding"  
23 (fabrication), "having no chin strap or other type of ties which would fasten under the chin"  
24 (fabrication), "a fixed front bill which extends approximately 4 inches" (fabrica-  
25

26 <sup>1</sup> The belief in "DOT approved" helmets, or in some kind of approval system, has become  
27 part of the training of police officers statewide, common language in the materials used by  
28 police officers in enforcing the statute (See the *Quik Code*), included in the information provided  
by the California Department of Motor Vehicles in describing the type of equipment a rider  
is required to use when riding a motorcycle in California, and even included in the  
California motorcycle training manual used to train motorcyclists on how to safely operate a  
motorcycle.

tion) and other references to fabrication, all the while acknowledging defendant's headgear bore "a label or embroidered letters DOT on the back."

In short, not only did the prosecution fail to make its case that the defendant who they admitted was wearing headgear bearing a certification of compliance - had violated the helmet law as written and/or interpreted by the California Courts, but the defendant did prove to this court's satisfaction that issuance of eight citations for wearing headgear bearing a certification of compliance with federal standards, violated the injunction issued by the Federal Court in *Easyriders*, thereby violating the defendant's Fourth Amendment rights as described in *Easyriders*.

Moreover, once it was established to the satisfaction of this court that no list of compliant helmets, or other objective criteria, exists that would give a person of ordinary intelligence a reasonable opportunity to know what is required or prohibited by the helmet law statutes, this court had no choice but to otherwise dismiss all the abovereferenced citations (including the citation for wearing no headgear at all) on the grounds that the enforcement policies and procedures adopted by the CHP and their allied agencies have rendered the mandatory helmet use statutes void for vagueness, and otherwise unworkable, as applied by the citing officers.

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford* 408 U.S. 104, 108 (1971)

ORDER AFTER HEARING

The CHP is the only State agency authorized by the statutes to adopt reasonable regulations establishing specifications and standards for motorcycle safety helmets.

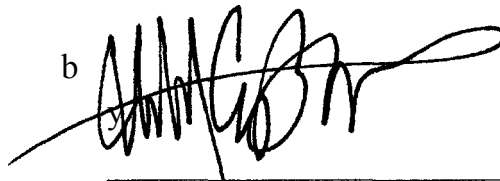
The CHP's failure to adopt such regulations, and make them available to the public, has rendered the helmet law statutes void for vagueness as applied.

Although the statutes have been found to be constitutional by the *Buhl*, *Bianco* and *Easyriders* courts, the law in question is not being applied in the manner contemplated by those courts. For certain, the helmet law is not being applied by the CHP and their allied agencies as contemplated in the *Easyriders* injunction.

Unless and until the CHP adopts compliance standards other than a citing officer's subjective opinion of whether or not a given helmet is properly fabricated (e.g.: complies with the actual, technical requirements of FMVSS 218), and abandons the contention that in order to comply with the statutes a motorcyclist must wear an "approved helmet," the helmet law statutes are void for vagueness, or otherwise unworkable, as applied, for the reasons stated above.

Wherefore, it is the finding of this court that the charges against the defendant in the above-entitled cases be dismissed, with prejudice, on the grounds that the statute, CVC §27803(b), as applied by the citing officers, is unconstitutional.

Dated: August 16, 2006

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H  
onorable Judge Michael Barton  
Superior Court of California